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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,103	02/05/2002	Dan E. Fischer	7678.569	5744
22913	7590	10/16/2003		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER WILSON, JOHN J	
			ART UNIT 3732	PAPER NUMBER
			DATE MAILED: 10/16/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/068,103	FISCHER ET AL.	
	Examiner	Art Unit	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-21 and 29-31 is/are allowed.
- 6) ☒ Claim(s) 1-18 and 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10</u> | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Eibofner et al (5912470). Eibofner shows a device for curing light having a body having a tapered proximal end as shown and a light source 2 at the distal end. The shown structure is inherently capable of functioning to facilitate insertion in a holding slot. The intended function is merely intended use with an inferentially claimed element, and therefore, is given no patentable weight. As to claim 3, see column 3, line 19.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470) in view of Kennedy et al (5634711). Eibofner shows the structure as described above, however, does not show the use of an LED. Kennedy

Art Unit: 3732

teaches using a LED 22. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of an LED as shown by Kennedy in order to make use of known light sources to deliver the desired light to the work area. As to claim 9, Eibofner does not show the use of an lens. Kennedy teaches using a lens 136, Fig. 7, column 4, lines 35-42. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of a lens as shown by Kennedy in order to better focus the light on the desired area. As to claim 10, see filter 7 of Eibofner. As to claim 12, Eibofner does not show the use of a heat sink. Kennedy teaches using a heat sink 26. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of a heat sink as shown by Kennedy in order to cool the light source.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470) in view of Sullivan (5975895). Eibofner shows the structure as described above, however, does not show controls for activating the light source for a duration of time and for altering the time. Sullivan shows a control 28 that activates a timer and includes a control for altering the timer, column 6, lines 66 and 67, and column 7, lines 1-12. It would be further obvious to modify Eibofner to include controls as shown by Sullivan in order to better deliver the desired amount of light to the work site.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470) in view of Kennedy et al (5634711) as applied to claim 12 above, and

Art Unit: 3732

further in view of Verderber (5457611). While Kennedy shows a heat sink 26, the above combination does not show the type of material used for the heat sink.

Verderber teaches using aluminum for a heat sink 30, column 3, lines 29-35. It would be further obvious to one of ordinary skill in the art to modify the above combination to include using an aluminum heat sink as shown by Verderber in order to make use of known materials to better dissipate heat.

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470). Eibofner shows the structure as described above. The size and shape with respect to other inferentially claimed hand pieces is an obvious matter of choice in hand pieces used to the skilled artisan.

Claims 15-18 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (5013240) in view of Osterwalder et al (6102696). Bailey shows a light curing device 30 having a body as suggested that is sized to be received in a holding tray at 83 that also receives other dental instruments as shown. Bailey does not show a light source at the distal end. Osterwalder shows a light source 32 at the distal end. It would be obvious to one of ordinary skill in the art to modify Bailey to include a light source located as shown by Osterwalder in order to make use of art known ways of locating element to better deliver light to the work site. The shown combination can inherently be inserted and rotated within the mouth of a patient. As to claim 18, see lens 44. As to claims 25-27, the size and shape with respect to other

Art Unit: 3732

inferentially claimed hand pieces is an obvious matter of choice in hand pieces used to the skilled artisan.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (5013240) in view of Osterwalder et al (6102696) as applied to claim 15 above, and further in view of Kennedy et al (5634711). The above combination does not show a heat sink. Kennedy teaches using a heat sink 26. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of a heat sink as shown by Kennedy in order to cool the light source.

***Allowable Subject Matter***

Claims 19-21 and 29-31 are allowed.

***Remarks***

Applicant's response filed September 2, 2003 has been carefully considered, however, is not persuasive. Applicant's remarks are held to be moot in view of the newly applied references and rejections above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3732

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw

October 10, 2003

Fax (703) 308-2708

Work Schedule: Monday through Friday, Flex Time